

Sentence Review Division
301 S. Park, Suite 328
P.O. Box 203005
Helena, MT 59620-3005
Phone: (406) 841-2977 or
(406) 841-2976

SENTENCE REVIEW DIVISION OF THE SUPREME COURT OF MONTANA

STATE OF MONTANA,)	Cause No. DC-17-665
)	
Plaintiff,)	Missoula County District Court
-vs-)	Montana Fourth Judicial District
)	
STEVEN SCOTT MITCHELL,)	DECISION RE: CLAIM OF
)	INEFFECTIVE ASSISTANCE OF
Defendant.)	COUNSEL
)	

On November 7, 2019, the Sentence Review Division of the Montana Supreme Court ("Division") heard the claim of ineffective assistance of counsel submitted in writing by Defendant Steven Scott Mitchell following his Sentence Review hearing held on August 2, 2019. The claim described Defendant Mitchell's concerns about the adequacy of representation by his appointed counsel, Nate McConnell, at the hearing held on August 2, 2019. Because Defendant Mitchell submitted his written claim of ineffective assistance of counsel after the conclusion of the hearing on his application for sentence review and before the Division rendered its decision upon the application, the Division deemed Defendant Mitchell's claim of ineffective assistance of counsel to be a request for appointment of substitute counsel in anticipation of requesting a rehearing of his application. For this reason, the Division has held its decision upon Defendant Mitchell's sentence review application in abeyance.

On November 7, 2019, the Division heard the testimony of both Defendant Mitchell and Mr. McConnell concerning the claim of ineffective assistance of counsel. Based upon such testimony and the affidavit of Mr. McConnell submitted in advance of the hearing on November 7, the Division finds that Defendant Mitchell attended the August 2 hearing with the expectation that Mr. McConnell would advance a particular legal argument on his behalf. The expectation arose from communications between himself and Mr. McConnell prior to August 2. During the course of Mr. McConnell's preparation for the sentence review hearing, he gathered information

in addition to that which he and Defendant Mitchell had discussed. The argument Defendant Mitchell expected to be advanced by Mr. McConnell at the sentence review hearing was not, in fact, advanced and argued, because Mr. McConnell had determined that the legal argument was not particularly strong or availing. Mr. McConnell's decision not to advance the particular legal argument was a strategic decision founded in Mr. McConnell's professional assessment of the relative strength of the particular legal argument in comparison to other arguments which could be advanced.

Mr. McConnell acted within the range of competence reasonably required of defense counsel, and his decision not to advance a particular legal argument, a decision largely confined to the discretion of defense counsel, did not render Mr. McConnell's assistance ineffective. Having found that Mr. McConnell's performance was not deficient, Defendant Mitchell's claim of ineffective assistance of counsel is not seemingly substantial and his request for appointment of substitute counsel is denied.

Accordingly, the Division's determination to hold in abeyance its decision on Defendant Mitchell's application for sentence review is vacated, and a written decision on the merits of the application will issue in due course.

DATED this 9th day of December, 2019.

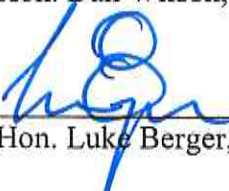
SENTENCE REVIEW DIVISION



Hon. Brenda Gilbert, Chairperson



Hon. Dan Wilson, Member



Hon. Luke Berger, Member

CERTIFICATE OF MAILING

I hereby certify that copies of the foregoing were mailed this 13th day of December, 2019, to the following:

Clerk of District Court
Missoula County
200 W. Broadway
Missoula, MT 59802

Mac W. Bloom, Esq.
Missoula County Attorney's Office
200 West Broadway
Missoula, MT 59802

Nate McConnell
Office of the State Public Defender
1917 South Higgins
Missoula, MT 59801

Steven Scott Mitchell #3025331
Montana State Prison
400 Conley Lake Road
Deer Lodge, MT 59722

Hon. John Larson
4th Judicial District
200 W. Broadway
Missoula, MT 59802

Montana State Prison
Records Department
700 Conley Lake Road
Deer Lodge, MT 59722

Board of Pardons and Parole
1002 Hollenbeck Road
Deer Lodge, MT 59722



Georgia Lovelady, Judicial Assistant
SENTENCE REVIEW DIVISION